

Mike Burns

From: John Anderson
Sent: Sunday, June 12, 2011 10:04 PM
To: John Anderson
Subject: election Q&A

Follow Up Flag: Follow up
Flag Status: Flagged

USD/OES/REGISTRATION UNIT
2011 JUN 14 PM 1:55

Greetings all. As most of you know, Albania's Electoral College is scheduled to hear a challenge to the CEC decision in the Tirana Mayor' race on Monday. The Q&A from the Albanian government, below, may help clear up some of the confusion that has surrounded the election and its aftermath. If you would like to interview someone from the government about this, please let me know and I will try to arrange it. Best regards, John

ALBANIA 2011 ELECTIONS: Q&A on the Tirana Mayor's Race

Q: The Electoral College already made one ruling on June 3. What's the EC hearing on June 13 about?

A: The Electoral College has been asked to rule on two separate cases brought by the Socialist Party challenging the May 8 Tirana Mayor's election. The first ruling, announced on Friday, June 3, addressed whether the Central Election Commission (CEC) exceeded its authority in issuing rulings related to the Tirana Mayor's race, whether it was appropriate for the CEC to evaluate ballots that were inadvertently inserted into the wrong ballot boxes in that election^[1], and whether its tabulation of the results from the race was legal. On all issues, the Electoral College ruled unanimously in favor of the CEC and against the Socialist challenge. A second hearing has been scheduled for Monday, June 13, on a more narrow Socialist Party challenge of whether the ballots inserted into the wrong boxes, which the CEC ruled were valid, should in fact have been ruled as invalid and thus not counted in the final results.

Q: After its June 3 ruling, the Electoral College had three days to issue its opinion. Did it make that deadline?

A: Yes. Under Albanian law, the Electoral College first releases its decision, and then it has three *business* days in which to release a written opinion explaining its ruling. The Electoral College ruled on the Tirana Mayor's on Friday, June 3, and issued its opinion on Wednesday, June 8 – within the three business day window.

Q: Is the Electoral College controlled by the government, independent or what? Who are the members?

The Electoral College is a completely independent, eight-person panel of judges chosen by lottery from among the 75 judges serving on the Court of Appeals in Albania. The current Electoral College was selected in 2009 and is made up of seven judges appointed to the Court of Appeals when the Socialist Party led the national government, and one who was appointed when the Democratic Party led the government. From this group of eight independent judges, five are chosen by lottery to sit on panels named to hear each election appeal brought before the Electoral College.

In the Electoral College's unanimous June 3 ruling, four of the justices who decided the case were appointed to the Court of Appeals during Socialist administrations, and one was named when the Democratic Party led the government. A different group of five judges was empanelled to hear the next case on June 13. All of them were appointed to the Court of Appeals during Socialist administrations.

Q: Didn't the CEC change the counting rules for the Tirana Mayor's race in the middle of the game to tilt the election in favor of the Democrats?

A: No. There was no written guidance given before the May 8 election on how to treat ballots inserted into the wrong ballot boxes, and Albania's electoral code is silent on the issue. *"The Electoral College found as ungrounded also the claim of the claimant [the Socialist Party] that the CEC changed the rules of game after the electoral process, since this is not the case,"* the Electoral College said in its June 8 opinion.

As a practical matter, the question of counting ballots inserted in the wrong box usually doesn't arise because it wouldn't affect the outcome – elections in Albania are rarely so close that such ballots would change the results -- and so in order to expedite the counting process and declare the winner in an election, such ballots are ignored. But when elections are so close that it could affect the outcome, these ballots often are counted, and they were counted in two

other Mayor's races last month – in the cities of Berat and Gjirokastra. The Mayor's race in Tirana was the only election in which the decision to count ballots mistakenly inserted into the wrong box was challenged.

The CEC decision to include ballots inserted in the wrong box in the final tally of the Tirana Mayor's election was made during the counting process, on May 12, when it became clear that the race was going to be very tight and that including such ballots could be a deciding factor in whether the candidate with the most votes actually won.

Q: But the CEC's decision was unprecedented.

A: That's not correct. Although the CEC had never found itself in a position like this before, there have been several cases where ballots inserted in the wrong boxes were ruled as valid by local electoral commissions and thus included in the final tally. In fact, in the 2007 Mayor's race in Temal, about 55 miles north of Tirana, a decision to include such ballots in the final tally overturned an apparent victory by the Democratic Party candidate and awarded the win to the Socialist candidate. And in this most recent 2011 election, the Socialist-controlled city of Berat, about 40 miles south of Tirana, decided to include such ballots in the race for Mayor, which the Socialist incumbent ended up winning by 877 votes.

Q: So was the decision to include ballots inserted in the wrong boxes appropriate?

A: The Electoral College ruled June 3 that the decision to include ballots inserted in the wrong boxes was not only appropriate, it was obligatory. In the end, under Albanian election law, there are eight reasons for ruling a ballot invalid (if it's illegible, for instance), and casting it in the wrong box is not one of them. According to the Electoral College's June 8 opinion, *"The electoral Code, in any of its provisions does not foresees the prohibition or forbiddance of evaluating and counting a certain number of votes, even those cast in the wrong ballot box, ballots which clearly express the will of voters who voted and it does not forbid the right of voters to have their votes reviewed or evaluated to find out whether the votes are valid or not....It is the Constitution of Albania which in its Article 45 determines the vote and it is a constitutional obligation to evaluate the vote, which obliges the CEC not only to count but also to evaluate the votes of voters in the framework of reaching the final aim, providing the integrity of the electoral process."*

Q: What happens next?

The Electoral College is expected to make a ruling fairly quickly after the hearing on June 13. Following its ruling, the Electoral College must issue its written opinion in the case within three business days. The Electoral College is the highest court in Albania to hear election challenges, and its decisions are final.

Following the Electoral College ruling, the CEC is obligated to under the law to certify the winner of the Tirana Mayor's election. The legal window for filing further appeals in the election has expired.

^[1] In this election in Tirana, four offices were at stake. Under Albania's electoral system, voters were given separate ballots for each office, and were to insert each ballot into a separate ballot box corresponding to the office in question. This system was established to expedite the counting of ballots for each office by eliminating the need to separate the ballots after they were cast. A relatively small number of voters inserted their ballots for mayor of Tirana into one of the other boxes. The question before the Electoral College is whether these ballots inadvertently inserted into the wrong box should be counted.

^[1] In this election in Tirana, four offices were at stake. Under Albania's electoral system, voters were given separate ballots for each office, and were to insert each ballot into a separate ballot box corresponding to the office in question. This system was established to expedite the counting of ballots for each office by eliminating the need to separate the ballots after they were cast. A relatively small number of voters inserted their ballots for mayor of Tirana into one of the other boxes. The question before the Electoral College is whether these ballots inadvertently inserted into the wrong box should be counted.